

Small Business Administration

§ 121.1103

a lower size standard unless it is recertified as small by SBA. If it does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on another assistance application, the concern must immediately inform the officials responsible for the pending procurement or other requested assistance of the adverse size determination.

(h) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided the case has not been accepted for review by OHA.

§ 121.1010 How does a concern become recertified as a small business?

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only.

While it is a formal size determination, notice of recertification is required to be given only to the applicant.

APPEALS OF SIZE DETERMINATIONS AND SIC CODE DESIGNATIONS

§ 121.1101 Are formal size determinations subject to appeal?

There is no right of appeal of a size determination. OHA, however, may, in its sole discretion, review a formal size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office. Unless OHA accepts a petition for review of a formal size determination, the size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office is the final decision of SBA. The procedures for requesting discretionary reviews by OHA of formal size determinations are set forth in part 134 of this chapter.

§ 121.1102 Are SIC code designations subject to appeal?

Appeals may be made to OHA, which has exclusive jurisdiction to determine appeals of SIC code designations pursuant to part 134 of this chapter.

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular sole source 8(a) contract, only the Associate Administrator for 8(a)BD may appeal.

(b) Procedures for perfecting SIC code appeals with OHA are contained in § 19.303 of the Federal Acquisition Regulations, 48 CFR 19.303.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 35739, June 30, 1998]

Subpart B—Other Applicable Provisions

WAIVERS OF THE NONMANUFACTURER RULE FOR CLASSES OF PRODUCTS AND INDIVIDUAL CONTRACTS